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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,334	02/12/2004	Franck-Phillippe N'Dia	AC0523US (#90613)	4914
28672 7590 10/12/2007 D. PETER HOCHBERG CO. L.P.A. 1940 EAST 6TH STREET CLEVELAND, OH 44114			EXAMINER PASCUA, JES F	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 10/12/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/777,334	Applicant(s) N'DIA, FRANCK-PHILLIPPE	
	Examiner Jes F. Pascua	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 16-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 February 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> .           |

Continuation of Attachment(s) 6). Other: The replacement drawing filed 7/9/07overcomes the drawing objection in the 4/9/07 Office action .

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “detachable straw attached to said container” claims 1 and 9 must be shown or the feature canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 9-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, welding of the side edges of the flexible body has not been previously set forth to warrant the language "bottom edges that are welded in the same manner as said side edges."

In claim 13, "said weld flange" lack antecedence.

Claims that have not been specifically mentioned are rejected since they depend from claims rejected under 35 U.S.C. § 112, second paragraph.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5, 7-10 and 13 are rejected under 35 U.S.C. 103(a) as being obvious over Patent Application Publication No. US 2003/0128900 A1 to Lawrie et al. and UK Patent Application No. GB 2 111 944 to Hardy et al.

Lawrie et al. discloses the claimed invention except that the pierceable opening (40) is a seal (24) instead of fitment covered by a pierceable barrier seal. Hardy et al. shows that fitment (214) is an equivalent structure known in the art (see page 3, lines 82-87). Therefore, because these two pierceable means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the pierceable seal for a fitment covered by a pierceable barrier seal.

Regarding claim 3, Lawrie et al. and Hardy et al. disclose the claimed invention, as discussed above, except for the material of the pierceable barrier seal comprising aluminum foil or ethylene vinyl alcohol. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include aluminum foil or ethylene vinyl alcohol in the material of the pierceable barrier seal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claim 4, Lawrie et al. and Hardy et al. disclose the claimed invention, especially the flexible panels of Lawrie et al. being laminate of an aluminum sheet covered with plastic material. However, Lawrie et al. does not disclose the plastic material being an inner layer of PE or PP and an outer layer of polyester or nylon. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use PE or PP for an inner plastic material covering the aluminum sheet and polyester or nylon for an outer plastic material covering the aluminum sheet in the Lawrie et al. container, since it has been held to be within the general skill of a worker in

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the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Lawrie et al. and Hardy et al. disclose the claimed invention, especially the bottom panel sealed to the first and second panels to support the container in an upright position. However, Lawrie et al. does not show the bottom sealed to the first and second panels along diagonal seams. It would have been obvious to one having ordinary skill in the art at the time the invention was made to seal the bottom panel to the first and second panels along diagonal seams in the Lawrie et al. container since it was known in the art that diagonally sealing the bottom panel to first and second panels in stand up pouches provides the pouch bottom with a defined configuration.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrie et al. and Hardy et al. as applied to claim 1 above, and further in view of U.S. Patent No. 6,265,038 to Frisk.

Lawrie et al. and Hardy et al. disclose the claimed device except for the panels of the container comprising a transparent outer layer and at least one additional layer comprising a printed inner surface. Frisk show that it is known in the art of stand up pouches to provide a transparent, multilayer material as a laminate with a reverse printed film. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the panel material of Lawrie et al. using the transparent, multilayer material as a laminate with a reverse printed film, since it has

been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

7. Claims 9-13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,561,110 to Herbert and U.S. Patent No. 3,647,386 to Gilford.

Herbert discloses the claimed device except for a straw that is attached to the container. Gilford discloses that it is known in the art to attach a tube (52, which meets the recitation of a straw) in another pierceable container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Herbert with the tube of Gilford, in order to inject contents into the container.

Furthermore, the tube (52) Gilford is "detachable" to the same degree as claimed.

Regarding claims 12 and 15, Herbert and Gilford disclose the claimed invention, as discussed above, except for the material of the pierceable barrier seal comprising aluminum foil or ethylene vinyl alcohol. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include aluminum foil or ethylene vinyl alcohol in the material of the pierceable barrier seal of Herbert, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.



8. Claims 1, 2, 7, 8-11, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,971,613 to Bell, U.S. Patent No. 6,595,391 to Anderson and Patent Application Publication No. US 2003/0128900 A1 to Lawrie et al.

Bell discloses the claimed device except for the fitment (27) having an opening that is covered by a barrier material. Anderson discloses that it is known in the art to provide a barrier (24) over the opening of an analogous fitment. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the fitment of Bell with the barrier material of Anderson, in order to prevent contaminants from entering the container subsequent to introducing filling material into the container.

Furthermore, Bell discloses the claimed device except for the container having a detachable straw attached to the container. Lawrie et al. discloses the it is known in the art to attach a detachable straw to an analogous container. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the container of Bell with the detachable straw of Lawrie et al., in order to facilitate extraction of the contents from the container.

Regarding claim 8, Bell, Anderson and Lawrie et al. disclose the claimed invention, as discussed above, except for the bottom (39) being sealed to the first and second panels (24, 26) along diagonal seams instead of curved seams. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the curved seams connecting the bottom of the Bell container to the first and second panels with diagonal seams, since the Examiner takes Official Notice of the

equivalence of diagonal seams and curved seams for their use in the container art and the selection of any of these known equivalents to permit the container of Bell to assume an upright position would be within the level of ordinary skill in the art.

9. Claims 3, 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell, Anderson and Lawrie et al. as applied to claims 2, 11 and 13 above, and further in view of Davis et al.

Bell, Anderson and Lawrie et al. disclose the claimed device, as discussed above, except it is unclear as to the material of the barrier material (24). Davis et al. discloses that it is known in the art to provide a multilayer material, including layers of NYLON, LLDPE and aluminum foil for an analogous barrier (28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the barrier of Anderson using the multilayer material of Davis et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

### ***Response to Arguments***

10. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jes F. Pascua  
Primary Examiner  
Art Unit 3782

JFP